

# General Terms and Conditions for the Use of KraussMaffei socialProduction

## 1. Introduction

KraussMaffei socialProduction, allows the customer ("Customer") to get an overview of the connected machines from his machine park via an app and a web application. The integrated social media messenger allows a convenient team communication within the shop floor. Besides messages of the Customers' personnel, specific machine events can be posted automatically in the chat by the system. The complete scope of services offered to the Customers is documented in the final order confirmation issued by KraussMaffei (hereinafter referred to as "Order Confirmation").

These General Terms and Condition ("GTC") govern the rights and obligations of all Customers using KraussMaffei socialProduction independent of the hardware devices and software platforms in use. KraussMaffei socialProduction (hereinafter the "Product") is provided by companies of the KraussMaffei Group, (hereinafter referred to as "KraussMaffei", "we" or "us").

## 2. Conclusion of Contract, Amendments and Supplements

The contractual relationship shall come into existence, unless otherwise regulated, after the Order Confirmation.

KraussMaffei is entitled to unilaterally amend and/or supplement these GTC with effect for the future insofar as this is necessary to safeguard KraussMaffei's legitimate interests, in particular when introducing new functions onto the Product. In this case, the Customer shall be informed of the changes and/or amendments with a notice period of at least three (3) months. If the Customer does not object to the validity of the new GTC within four (4) weeks of notification (objection period), the amended GTC shall be deemed to have been accepted by the Customer. KraussMaffei shall refer to the right of objection and the significance of the objection period in his notification. In the event of an objection, the Customer may continue to use the Service according to the previous version of the GTC, but KraussMaffei is entitled to terminate the contractual relationship for good cause within three (3) months after the receipt of Customers objection.

## 3. Operation of the Product

KraussMaffei is the sole operator of the Product and corresponding platform and reserves all industrial property rights in this respect. The Product encompasses all the services stated in the Order Confirmation.

Unless otherwise expressly stipulated in these GTC, all rights shall remain with the respective holder of the rights.

## 4. Duration

The exact duration for the usage of the Product are stated in the corresponding order confirmation. Unless otherwise agreed, the Customer is able to purchase a license of the Product for an initial minimum term of either 12 months or 24 months.

Unless otherwise specified in the Order Confirmation, the term is automatically extended by an extension term with the same duration as the initial term (i.e. by 12 months or 24 months, as the case may be) respectively, unless the contract is terminated by written notice at least three (3) months before the end of the initial term or the end of an extension term.

## **5. Access to the Product**

After issuing of the Order Confirmation, the installation and configuration of the hardware at the latest, KraussMaffei shall provide the Customer with the information necessary for access to the Product. The Customer will be given an initial and temporary password which he will be required to change after the first login.

In his own interest, KraussMaffei recommends the Customer to keep the access data confidential and not to make them available to third parties.

To access the Product, the Customer requires a suitable computer system with a web browser or a smart phone with a dedicated application and an Internet connection with sufficient bandwidth. The exact system requirements can be obtained from KraussMaffei.

## **6. Right of Usage:**

After the Order Confirmation, the installation and the configuration of additional hardware, the Customer will be able to use the Product.

The scope of services of the Product and the usage fees to be paid by the Customer to KraussMaffei depend on the Order Confirmation.

In accordance with these GTC, KraussMaffei grants to the Customer a non-exclusive right to use the Product for the duration and scope (e.g. functionalities, number of connected machines) defined in the Order Confirmation. The Customer is aware that he may only use the Product during the term of the contractual relationship with KraussMaffei. After this period of time, there is no right to further use of the Product.

Additionally, the Customer shall provide information on the number of accounts to be initially created for the Product. Should the Customer require additional user accounts, he shall inform KraussMaffei in text form. KraussMaffei will then ensure that the additional accounts are created in a reasonable timeframe.

Furthermore, all limitations communicated to the Customer by KraussMaffei during or prior to the conclusion of the contractual relationship shall be decisive.

## **7. Obligations of the Customer**

The Customer shall read and comply with all instructions and requirements in these GTC or the Order Confirmation, including the annexes. The customer shall provide all relevant information (e.g. regarding data protection) for his employees.

The Customer must ensure, that all machine requirements for the Product (e.g. the KraussMaffei smartCube as the hardware component) according to the supplier's specification are fulfilled.

The Customer shall ensure an internet connection with sufficient bandwidth for the KraussMaffei smartCube of each of the machine(s) in order to use the Product. All costs for such internet connection are to be borne by the Customer.

In addition, all configuration of the network which have impact on the configuration of the smartCube may only be changed after coordination and agreement with KraussMaffei. The Customer shall refrain from all measures and actions that endanger the stability and security of the Product, in particular, the Customer shall refrain from changing the configuration or using any KraussMaffei hardware outside of their intended purposes.

The Customer is obliged to critically check the data that the Product provides for correctness, completeness and usefulness. Should any errors, discrepancies or problems arise during the use of the Product, the Customer shall inform KraussMaffei without undue delay. At the request of KraussMaffei the Customer will concretize his notification and support KraussMaffei in the analysis of the problem.

In the event that a machine connected to the Product is intended to be move to another production plant or facility, the Customer shall inform KraussMaffei in text form. If this results in additional costs for KraussMaffei that are necessary for the further provision of the machine connection to the Product (e.g. new configuration of the smartCube), these costs shall be borne by the Customer. In this case KraussMaffei shall send the Customer an offer in advance.

The Customer will refrain from exporting any hardware related to the Product in case that this is not permissible under the laws of his country of domicile or the United States of America and to impose this obligation also on his purchasers without prejudice to the other provisions of the contract and these terms and conditions.

## **8. Payment Terms**

The exact prices for the usage of the Product are stated in the corresponding Order Confirmation. All invoices are to be paid by the Customer within 30 days net from invoice date, unless separate agreements have been made between KM and the Customer on payment methods.

All fees declared, unless specifically indicated otherwise, are exclusive of VAT and other taxes and duties which must be paid on the basis of statutory provisions (e.g. withholding taxes). If, according to relevant legal regulations, a right of choice exists with regard to the registration and payment of the respective taxes and duties, these obligations shall be the responsibility of the Customer. Should we be subject to any additional taxes or duties, the Customer shall indemnify us against such taxes or duties or refund them to us if such indemnification is not possible.

If the Customer defaults on payments, we reserve the right to refuse fulfillment of due services and to restrict or block the Customer's access to their Customer account until all bills have been settled. A block may result in the fact that access to the product as a whole is no longer possible or that certain functions can no longer be used with existing access. In such cases, we will notify the Customer seven (7) working days in advance to provide enough time to cure the default. Our other legal and contractual rights of remain unaffected. Such restriction of a Customer account may not take place if it would be inappropriate or unreasonable in the given circumstances (the circumstances leading to the unreasonableness must be known to us, which presupposes information by the Customers; restriction of the service due to an outstanding payment of one month is generally regarded as proportionate.). Our financial claims remain unaffected by a Customer account restriction. Upon settlement of due payments, the Customer account and its functions will be re-enabled. We reserve the right to restrict a Customer's access also as a milder remedy, provided that we have the right to immediately terminate the contract based on these GTC.

Expenses incurred by chargeback of a transaction (e.g. due to lack of coverage), due to incorrectly transmitted Customer data and/or reminders of due claims will be charged to the Customer's account.

Offsetting is only possible with claims that have already been recognized by the respective other contracting party or established by court order. A right of retention can only be asserted for claims arising from the respective Order Confirmation.

## **9. Price Adjustments**

Unless otherwise specified the fee for the Product is fixed as provided in the Order Confirmation with the defined number of connected machines and functionalities. If the number of connected machines or the scope of functionalities is to be changed, the parties shall reach an agreement as to this in an amendment to the existing Order Confirmation or in a new Order Confirmation.

Irrespective of the foregoing, KraussMaffei is entitled to adjust the usage fees for the Product for each extension term. In this case KraussMaffei shall announce the price adjustment in text form at the latest three (3) months prior to the end of the term or of an extension term.

If the Customer is not prepared to accept the price adjustment announced by KraussMaffei, the Customer is entitled to terminate the contractual relationship with a notice period of one (1) month prior to the end of the term or of an extension term.

## **10. Subcontractors**

KraussMaffei is entitled to commission third parties to provide services which are owed by KraussMaffei under these GTC and the Order Confirmation.

Irrespective of the provision of services by third parties, KraussMaffei remains in principle obliged to the Customer to comply with the contractual regulations.

## **11. Warranty**

Insofar as is feasible in the ordinary course of business, Customers must check the Product without undue delay and must notify us of any defects or insufficiencies without undue delay. Notification must be given of defects without undue delay giving an understandable account of the error symptoms, if possible, with evidence in the form of records in writing, screenshots or other documents illustrating the defects or insufficiencies in writing (emails shall suffice).

Claims for damages are subject to the qualifications stipulated in Section 12 of these GTC.

Defect claims shall not be valid in the case of a negligible deviation from the agreed or presupposed quality or in the event of only a negligible impairment of the usability of the Product in accordance with the purpose of the Agreement. In particular, we explicitly accept no liability for:

- a. incorrect information from the Customer with regard to the Customer's Details provided during registration or other data uploaded or provided by the Customer or supplied by the Customer in any other way;
- b. uninterrupted availability of the Product or possible system- or network-related outages, interruptions or malfunctions of the installations or features of the Product insofar as these are outside of our sphere of influence; in particular not for errors due to force majeure or the failure of communication networks and gateways;
- c. minor malfunctions of the Product;
- d. unauthorized third-party acquisition or use of the Customer's personal data (for example due to unauthorized access as a result of database hacking), provided that we are not to be held at fault and that there is no legally or contractually mandatory liability;
- e. assurances of any kind which the Customer makes to other Customers;

The limitation period for the assertion of defects is three (3) months, after the Customer has become aware or should have become aware of the circumstances giving rise to the claim. Irrespective of the Customer's knowledge, the claim shall expire three (3) years after the event which caused the damage. The limitation does not apply in the case of intent. The Customer's statutory inspection obligation and duty to give notice of defects remain unaffected (in which case the notification period shall in general be seven (7) days). Furthermore, any errors or defects that are known to the Customer or noticeable by the Customer must be reported within seven (7) days in order to be considered a defect.

## 12. Liability and Indemnification

Compliance with the instructions in this document is obligatory for the Customer.

KraussMaffei or its subcontractors are not liable for any damages if the Customer or his employee has not observed the instructions of this document.

Furthermore, the following applies:

- a. In the case of simple negligence, KraussMaffei or its subcontractors shall only be liable for damages resulting from the violation of essential contractual obligations, the fulfilment of which is essential for the proper execution of the contract and on the observance of which the contractual partner regularly relies and may rely; in this case, however, liability shall be limited to the typical foreseeable damage. The typical damage is generally limited to the remuneration agreed between us and the Customer for the damage-relevant contract (Order Confirmation). The typical damage does not exceed five times the agreed remuneration. The typical damage in this case is limited to 2,500.00 Euros. This does not apply if the limitation in the individual case would be inappropriate with regard to aspects of legally compelling equity and business fairness. This limitation of liability applies in the same manner for damages caused by the gross negligence by employees or representatives who are not agents or members of the management of KraussMaffei.
- b. Under no circumstances shall it include liability for consequential damages resulting from interruption of operations, loss of production, loss of profit and costs for increased or futile production and recall actions.
- c. In cases of clause a, the limitation period shall be twelve (12) months after the point in time at which the claim originated and the Customer became aware or should have become aware of the circumstances giving rise to the claim. Irrespective of the Customer's knowledge, the claim shall expire three (3) years after the event which caused to the damage. The provisions concerning the limitation period in the case of warranty in Section 11 of these GTC prevail.
- d. The limits to liability above shall apply for all damage claims regardless of legal basis with the exception of the Ordering Party's damage claims (i) because of willful intent, (ii) according to product liability law, (iii) because of bad faith failure to disclose a defect, (iv) due to defects covered by a guarantee of condition or quality (in this regard the liability terms and limitation period provided in the guarantee shall apply), (v) from injury to life, limb or health or (vi) due to gross negligence of agents or members of the management of KraussMaffei.
- e. The Customer confirms that the Customer has all the authorizations required for the conclusion of this contract and the use the Product and has ensured that the employees and other parties whose data are processed or other rights are affected during the use of the Product have been informed accordingly on their rights, hazards and obliged to follow the instruction according to these GTC and the provisions and instructions of the used devices. In case of violation of this provision, the contractual partner shall indemnify us from any claims and costs, including legal action.
- f. The above liability limitations and indemnification also apply to claims for damage claims against KraussMaffei service partners, subcontractors or agents, management, employees or representatives.

## 13. Data Protection Information

Our Data Privacy Statement shall apply for the usage of the Product (<https://www.kraussmaffei.com/en/data-protection>)

## **14. Confidentiality**

The parties undertake to keep secret all business and trade secrets or information which they receive or become aware of from the other party during the performance of the contract. The information and documents may not be made available to third parties. Affiliates of the parties are not deemed to be third parties if these affiliates are subject to secrecy obligations corresponding to those set forth herein.

Not covered by the obligation of secrecy are information and documents which were generally known and accessible at the time of disclosure or which later became generally known and accessible without any breach of secrecy obligation or which were already known to the receiving party at the time of disclosure or which were legitimately made accessible to it by third parties.

Furthermore, the transmission of information and documents to advisors of the parties who are obliged to maintain secrecy pursuant to § 203 StGB (German Criminal Code, professional secrecy holder) is not covered by the obligation of secrecy.

## **15. Intellectual Protection Rights**

The Customer's right to use the Product supplied by KraussMaffei shall be limited to the purposes as provided in the Order Confirmation and in these GTC. All other rights are reserved. The source code of the Product will not be delivered unless expressly agreed.

The Customer shall refrain from (a) reverse engineering the Product; or (b) modifying, adapting or translating the Product, or creating derivative works of the Product, except in each case to the extent expressly permitted in the Contract or by mandatory law. The same shall apply to any publication of any benchmark tests with the Product without KraussMaffei's prior written consent. Any copies of the Product shall contain all of the copyright notices shown on the original.

Neither the Customer's right to copy and modify the Product to the extent expressly permitted by applicable mandatory legislation regarding back up or the elimination of errors nor the Customer's rights under applicable mandatory legislation regarding reverse engineering shall be deemed restricted hereby.

The Customer shall refrain from selling the Product or generally making the Product available to any third party, whether by delivering a data medium, over a network, or in any other form, whether or not for compensation, except with KraussMaffei's prior written consent. Unless KraussMaffei has reasonable cause to withhold the consent, it shall be granted if the third-party acquirer assumes all obligations regarding the Product under the Order Confirmation and these GTC and the Customer destroys all copies of the Product in its possession.

If the Order Confirmation expressly provides that copies of the Product may be made available to a third party ("End User") or that the Customer may allow End Users to access the Product, this right shall only apply to the extent that (a) such End User has executed a valid license contract with the Customer that is (i) not less protective of KraussMaffei's Property Rights in the Product and (ii) not less restrictive on the End User's right of use of the Product than the provisions set forth in the preceding parts of this Section; (b) the Customer implements appropriate procedures to supervise and enforce End User compliance with such restrictions; and (c) Customer complies with export control restrictions allowing End Users to access the Product. Customer also agrees to (a) indemnify KraussMaffei for any damage or loss suffered in connection with (i) the infringement of KraussMaffei's Property Rights in such Product by an End User or (ii) any other act or omission by an End User which, if conducted by Customer would be considered a breach of contract, and (b) hold KraussMaffei harmless from any Third Party Claim asserted by End Users in connection with the use of, or access to, the Product.

All right and title worldwide, including any right of use or exploitation, in or to any parts of the Product or other works or results discovered, developed or created by KraussMaffei or KraussMaffei's agents in connection with the Order Confirmation shall exclusively be owned by KraussMaffei. Where such development is part of KraussMaffei's services to the Customer, the Customer shall receive a simple

non-exclusive license in such works or results in accordance with the Order Confirmation and/or these GTC.

KraussMaffei may use and exploit all improvements, alterations or amendments made by the Customer to the Product. The Customer grants to KraussMaffei a non-exclusive, perpetual, worldwide, unlimited, royalty-free, sublicensable license to use and exploit such improvements, alterations or amendments for all methods and purposes.

## **16. Miscellaneous**

Terms and conditions which deviate from these GTC and/or which are contradictory in any other way are expressly rejected by us, including if services are rendered in individual cases without the Customer objecting to the GTC.

These GTC shall be governed by and construed in accordance with the laws of the Federal Republic of Germany with exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The court located at our registered office in Munich is responsible for resolving any legal dispute arising from these GTC or the validity of GTC provided that the parties to the agreement be merchants, legal persons under public law, or special assets) under public law.

The Customer may only transfer claims against us relating to these GTC and any Order Confirmation to third parties subject to our approval in writing. We are entitled to transfer rights and obligations arising from the contract with the Customer in whole or in part to third parties in compliance with the agreed and statutory Customer protection obligations, confidentiality obligations and data protection requirements.

In the event that any clause of these GTC shall be determined by any competent authority to be invalid, unlawful, or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

To the extent we fail to or decide not to exercise any right or claim against the Customer to which we are entitled, this will not constitute a waiver of that right unless otherwise indicated to the Customer in writing.

Changes or amendments to these GTC require an agreement between the parties in principle to be made in text form to be effective. The text form requirement shall also apply to the waiver of this text form requirement itself. Unless otherwise provided by law, e-mail shall be deemed to be in text form, but not in writing. The possibility of individual agreements deviating from these GTC is not restricted in any way.